

VZCZCXYZ0033
PP RUEHWEB

DE RUEHSG #2521/01 3501816
ZNR UUUUU ZZH
P 161816Z DEC 05
FM AMEMBASSY SANTIAGO
TO RUEAWJL/DEPT OF JUSTICE WASHINGTON DC PRIORITY
RUEHC/SECSTATE WASHDC PRIORITY 8061
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

UNCLAS SANTIAGO 002521

SIPDIS

SIPDIS

DEPT FOR INL, EB/ESC/TFS; JUSTICE FOR OIA AND AFMLS;
TREASURY FOR FINCEN

E.O. 12958: N/A

TAGS: [SNAR](#) [KTFR](#) [PTER](#) [CI](#)

SUBJECT: CHILE: 2005 INCSR PART II: MONEY LAUNDERING

REF: STATE 210351

¶1. Please find below the 2005-2006 International Narcotics Control Strategy Report (INCSR) Part II: Financial Crimes and Money Laundering for Chile.

¶2. SUMMARY. Chile's large, well-developed banking and financial sector stands out as the strongest in the region. With rapidly increasing trade and currency flows, the government is actively seeking to turn Chile into a global financial center. However, the Chilean government continues to believe money laundering is not a significant threat. Stringent bank secrecy laws emphasizing privacy rights have been broadly interpreted and hamper Chilean efforts to identify money laundering. Chile's Financial Intelligence Unit, operating under a narrow and limited interpretation of law, has become a hindrance in efforts to combat money laundering and terrorist finance. No regulatory framework to oversee the non-banking sector exists. There is strong evidence that Chile's favorable reputation and incomplete regulatory oversight is attracting an increasing number of money launderers, particularly in the northern free trade zone and in the money exchange house sector.

¶3. Money laundering appears to be primarily narcotics-related. Until December 2003, money laundering was only a crime when direct proceeds of drug offenses were involved. Criminal proceeds laundered through Chile generally appear to be derived from foreign criminal activity. A significant amount of the funds derived from illegal activity are laundered through the United States. Chile is not considered to be an offshore financial center, and offshore banking-type operations are not permitted. END SUMMARY.

¶4. Money laundering in Chile is criminalized under Law 19.366 of January 1995 and Law 19.913 of December 2003. Prior to the approval of Law 19.913, Chile's anti-money laundering program was based solely on Law 19.366, which criminalized only narcotics-related money laundering activities. The law required only voluntary reporting of suspicious or unusual financial transactions by banks and offered no "safe harbor" provisions protecting banks from civil liability; as a result, the reporting of such transactions was extremely low. Law 19.366 gave only the Council for the Defense of the State (Consejo de Defensa del Estado, or CDE) authority to conduct narcotics-related money laundering investigations. The Department for the Control of Illicit Drugs (Departamento de Control de Trafico Illicito de Estupefacientes) within the CDE functioned as Chile's financial intelligence unit ("Unidad de Analisis Financiero" or UAF) until a new UAF with broader powers was created under Law 19.913.

¶5. Law 19.913 went into effect on December 18, 2003. Under this law, predicate offenses for money laundering are expanded to include terrorism in any form (including the financing of terrorist acts or groups), illegal arms trafficking, fraud, corruption, child prostitution and pornography, and adult prostitution. The law also created the new financial intelligence unit, the Unidad de Analisis Financiero (UAF), within the Ministry of Finance, which replaced the CDE as Chile's UAF.

¶6. Law 19.913 requires mandatory reporting of suspicious transactions by banks, non-banks and any entity handling financial transactions. The law also requires that obligated entities maintain registries of cash transactions that exceed 450 unidades de fomento (approximately \$12,000) and imposes record keeping requirements (five years). All cash transaction reports contained in the internal registries are sent to the UAF at least once per year, or more frequently at the request of the UAF. However, the law does not impart any consequences on an entity for non- or partial compliance. The law also does not specify under what parameters information should be reported; each financial entity independently decides what constitutes irregularities in financial transactions. This means that in effect there is still only voluntary, not compulsory, reporting of suspicious or unusual financial transactions. The law also dictates that the movement of funds exceeding 450 unidades de fomento into or out of Chile must be reported to Customs, which then files a report with the UAF. However, Customs and other law enforcement agencies are not permitted to seize or otherwise stop the movement of funds, and the entry or exit of these funds are not subject to taxation.

¶7. Notably, the December version of Law 19.913 was a significant modification of the orginal Law 19.913 drafted and passed by Chile's congress in September 2003. The earlier version allowed the UAF to gather information, impose sanctions, and lift bank secrecy protections under limited circumstances. These provisions were deemed unconstitutional by Chile's constitutional tribunal, which held that these powers granted to the UAF violated privacy rights guaranteed by the constitution. The tribunal's decision therefore eliminated the ability of the UAF to request background information from government databases or from obligated entities on the reports they submitted. Gone also were the UAF's power to impose sanctions on entities for failure to file or maintain reports or to lift bank secrecy protections easily. A new bill has been drafted to restore some of these powers to the UAF, but it has been stalled in Congress for over eighteen months.

¶8. The Unidad de Analisis Financiero began operating in April 2004, and began receiving suspicious transaction reports (STRs) from obligated entities the following month. In 2005, the UAF received approximately 10 STRs from the banking sector per month. Suspicious transaction reports from financial institutions are received electronically, via a system known as SINACOFI (Sistema Nacional de Comunicaciones Financieras) that is used by banks to send information amongst themselves and the Superintendence of Banks in an encrypted format. The UAF has not yet developed a suspicious transaction disclosure form for entities other than banks and financial institutions, and therefore does not receive regular STRs from non-financial institutions. Cash transaction reports (CTRIs) are only reported upon request. Customs sends reports on the transportation of currency and monetary instruments into or out of Chile to the UAF on a daily basis.

¶9. After receiving a suspicious transaction report, the UAF may request account information on the subject of the STR from the institution that filed the report. The UAF can also request CTRIs from obligated entities at any time, but is required by law to request at least once per year all CTRIs filed from each institution. If the draft bill is passed, the UAF would then be able to request information from any entity that is obligated to file suspicious transaction reports. The draft law would also permit the UAF to request

information from any entity if that information is necessary to complete the analysis of an STR. The draft law would also allow the UAF access to government databases. These functions would require authorization from the Santiago Appeals Court, although the draft bill stipulates that access to government databases would only require court authorization for protected information, such as tax information.

¶10. Banks are supervised formally by the Superintendent of Banks and informally by the Association of Banks and Financial Institutions. Banks are obligated to abide by "know your customer" standards and other money laundering controls for checking accounts. However, savings accounts are not subject to the same compliance standards; only a limited number of banks rigorously apply money laundering controls to non-current accounts. A significant gap in Chile's efforts to combat money laundering is that non-bank financial institutions, such as money exchange houses, currently do not fall under the supervision of any regulatory body.

¶11. Chile's gaming industry consists of the Superintendent of Casinos, which is a supervisory body without law enforcement or regulatory authority, and seven casinos located throughout the country. However, Chile is engaged in sorting through international and domestic bids for 17 additional casinos legislated by the Chilean congress. There is currently no legal framework for regulating the money moving through the gaming industry.

¶12. One free trade zone exists in the northern region of Chile at Arica. The borders within the free trade zone are porous and largely unregulated. Strong indications suggest money laundering schemes are rampant in the free trade zone, and Chilean resources to combat this issue are extremely limited.

¶13. The CDE continues to analyze and investigate any cases opened prior to the establishment of the UAF. Following completion of a judicial reform in June 2005, all cases deemed by the UAF to require further investigation are sent to the Public Prosecutor's Office (Ministerio Publico or MP).

In effect, the UAF operates as a warehouse of information which is internally analyzed, investigated and judged without external input. To date, only two reports have been submitted to the MP, both of which contained inadequate information for future investigation. The Public Prosecutor's Office has the ability to request that a judge issue an order to freeze assets under investigation and can also, with the authorization of a judge, lift bank secrecy provisions to gain account information. The Public Ministry has up to two years to complete an investigation and prosecution.

¶14. Given the above legislative restrictions and the narrow interpretation of the law under which the UAF currently operates, it is no surprise that no money laundering cases have been prosecuted since the inception of the UAF. At the same time, the Chilean investigative police (PICH) and the Public Prosecutor's Office continue to cooperate with U.S. and regional law enforcement in money laundering investigations.

¶15. Terrorist financing in Chile is criminalized under Law 18.314 and Law 19.906. Law 19.906 went into effect in November 2003 and modified Law 18.314 in order to sanction more efficiently terrorist financing in conformity with the UN International Convention for the Suppression of the Financing of Terrorism. Under Law 19.906, the financing of a terrorist act and the provision (directly or indirectly) of funds to a terrorist organization are punishable. The Superintendent of Banks circulates UNSCR 1267 consolidated list to banks and financial institutions.

¶16. No terrorist assets belonging to individuals or groups named on the list have been identified to date in Chile. If assets were found, the legal process to freeze and seize them remains unclear. Law 19.913 contains provisions that would

allow prosecutors to request that assets be frozen based on a suspected connection to criminal activity. Government officials have stated that Chilean law is currently sufficient to freeze and seize terrorist assets; however, the provisions for freezing assets are based on the drug law, which at times has itself been interpreted narrowly by the courts. While assets have been frozen during two drug investigations, it is unclear the new system would operate for a terrorism financing case. The Ministry of National Property currently oversees forfeited assets and proceeds from the sale of such assets are passed directly to the national regional development fund to pay for drug abuse prevention and rehabilitation programs. Under the present law, forfeiture is possible for real property and financial assets. Civil forfeiture is not allowed by current law.

¶17. Chile is a party to the 1988 UN Drug Convention, and has signed, but not yet ratified, the UN Convention against Transnational Organized Crime. In November 2001, the GOC became a party of the UN International Convention for the Suppression of the Financing of Terrorism. On December 11, 2003, the GOC signed the UN Convention Against Corruption. Chile is a member of the OAS Inter-American Drug Abuse Control Commission (OAS/CICAD) Experts Group to Control Money Laundering. Chile is a member of the South American Financial Action Task Force on Money Laundering (GAFISUD) and is currently considered in compliance with the organization's recommendations. The CDE became a member of the Egmont Group of financial intelligence units in 1997, and the UAF was vetted by the Egmont Group in October 2004.

¶18. In the establishment of the UAF, Chile created an entity that meets the Egmont Group's definition of a Financial Intelligence Unit. However, the UAF is hindered by its inability to sanction obligated entities for non-compliance; its lack of access to information from other government agencies; and, by a very narrow interpretation of how the UAF operates and coordinates with law enforcement and other government agencies. This interpretation directly impacts the effectiveness and accountability of the UAF.

¶19. The continuation of these limitations will be a step backward, reversing the steps Chile has taken over the past years to create a regime capable of investigating, punishing, and deterring financial crimes. With signs of growing money laundering and with it also terrorist financing, Chile lacks the legal ability to obtain necessary information and coordinate efforts to address these issues. To compete in the global financial sector, the current operating procedures of the UAF, in terms of both legislation and interpretation of current law, need to evolve in order for Chile to be able effectively to combat money laundering and terrorist finance.

KELLY